

RALPH G. ABBOTT

IBLA 89-334

Decided August 9, 1990

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming an order by the Farmington Resource Area Manager requiring submission of a sundry notice of intent to abandon a well on oil and gas lease NM 0338690.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Assignments and Transfers

Assignment of a Federal oil and gas lease remains ineffective to release a record title-holder of the lease from ultimate responsibility to plug or produce a well on leased land until such assignment is approved by the Department.

APPEARANCES: Ralph G. Abbott, Provo, Utah, pro se; Margaret C. Miller, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ralph G. Abbott, doing business as Abbott Oil and Gas (Abbott), has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 22, 1989, affirming an order issued by the Farmington Resource Area Manager that required Abbott to submit a sundry notice of intent to abandon well No. 23 located in sec. 11, T. 28 N., R. 13 W., New Mexico Principal Meridian, on Federal oil and gas lease NM 0338690. On December 4, 1962, lease NM 0338690 was segregated from lease SF 078072 when that lease became part of the Cha Cha Unit. Effective September 1, 1964, lease NM 0338690 was committed to the Central Totah Unit, for which the designated unit operator was Paramount Petroleum Corporation. While lease NM 0338690 was so committed, well No. 23 was drilled.

On October 28, 1976, after numerous intermediate transfers of ownership, lease NM 0338690 was assigned to Fast Enterprises, a partnership comprised of Abbott and Glenn M. Sill. The assignment was approved by BLM effective April 1, 1979. On November 15, 1978, a bond from Aetna Casualty & Surety Company in the amount of \$10,000 was filed with BLM to insure performance by the lessee of the lease terms. That bond, naming Fast Enterprises, Abbott, and Glenn M. Sill, principal parties whose conduct is indemnified by the bond, remains in effect.

On October 21, 1986, BLM assessed Paramount \$55,020 in civil penalties for failure to submit a sundry notice of intent to abandon well No. 23 on lease NM 0338690 and failure to submit suitable plans to either abandon or begin production from 22 other wells in the terminated Central Totah Unit. On May 19, 1987, BLM then notified Fast Enterprises, as record title-holder of lease NM 0338690, to submit a sundry notice of intent to either plug and abandon well No. 23 or to rework the well and produce from it. The order provided, concerning well No. 23, that

the Bureau of Land Management holds Fast Enterprises responsible for the noncompliances [on lease 0338690]. * * * You are hereby given (30) days in which to submit to this office, your plans to correct the previously mentioned noncompliances * * * Failure to comply with this order will result in assessments pursuant to 43 CFR 3163.1(a)(2) (formerly 3163.3(b)) for this minor violation. Continued failure to abate will result in Fast Enterprises being liable for civil penalties pursuant to 43 CFR 3163.2 (formerly 3163.4-1). Continued failure to comply will result in this office making contact with your Surety (Aetna Casualty and Surety Company) for collection of the lessees' bond for an amount to cover the plugging of the well, and cleanup of the lease.

(Order dated May 19, 1987, at 1).

On September 2 and October 6, 1988, the Area Manager ordered Fast Enterprises and/or Abbott to submit a Sundry Notice of Intent to abandon the well and to complete plugging operations by October 15 and November 15, 1988, respectively. Abbott requested review by the State Director on December 14, 1988, stating that he had no interest in the Gallup formation of lease NM 0338690 where well No. 23 was completed, and that he had received no income from well No. 23. To support his contention that he was not a responsible party he provided a copy of part of an agreement of sale for Fast Enterprises to show that the partnership was sold on August 1, 1980, to Overland Oil and Gas Corporation.

On February 22, 1989, the decision here under review was issued, affirming the order to Fast Enterprises to plug well No. 23. The February 22, 1989, decision found that:

The record shows that Fast Enterprises owns 100% record title to the lease as a result of an assignment from Horton and Associates. By accepting the assignment, Fast Enterprises assumed ultimate responsibility for compliance with all lease terms and conditions including compliance with all orders issued by the authorized officer. The record title assignment referred to by Mr. Abbott in his letter of December 14, 1988, from Fast Enterprises to Overland Oil and Gas Corporation was never approved by BLM. Accordingly, Fast Enterprises is liable for plugging well No. 23 because it is record title holder of the entire lease.

* * * * *

The Area Manager was correct in directing the order to Mr. Abbott as one of the partners of Fast Enterprises. Notice to one partner is notice to the entire partnership. If the Area Manager has been unsuccessful in getting Fast Enterprises to respond, the Area Manager may direct all demands to Mr. Abbott. If no partnership assets exist, the Area Manager may have to look to the surety before seeking Mr. Abbott's personal assets.

Id. at 1.

In his statement of reasons for appeal (SOR), Abbott repeats the contentions made to BLM that he has no legal obligation to plug well No. 23 and that he lacks authority to enter lease NM 0338690 because, alternatively, transfers not recorded with BLM had either prevented him from acquiring title from his assignors, or subsequent transfers not recorded with BLM had divested him of ownership in the lease. First arguing that he had not acquired title to the formation where well No. 23 was completed, he explains that:

An assignment of record title dated Nov. 18, 1961, whereby Aspen Drilling Co. assigned all of its rights, title and interest in the [S 1-1/2 of sec. 11] to D. W. Falls, Inc. is recorded in book 503, page 65 of the records of San Juan County, New Mexico. This assignment should have been filed with the B.L.M. in order to make the B.L.M. records reflect the true ownership in this lease and lands.

(SOR at 1).

Abbott then states that he sold his interest in Fast Enterprises in August 1980 and consequently received no income from well No. 23. He also furnishes a copy of a communitization agreement for the Dakota producing interval in sec. 11, T. 28 N., R. 13 W., dated September 20, 1961, to show that other firms held record title to land in lease NM 0338690.

BLM responds that the communitization agreement relied on by Abbott was not approved by BLM; that well No. 23 has ceased production and the communitization agreement has expired; and that Abbott's contentions are refuted by "the agency official record which is the only source of ownership documentation to which the agency may refer" (Answer at 2).

[1] None of the documents relied on by Abbott to excuse him from responsibility for plugging well No. 23 is of record with the Department.

A Federal oil and gas lease may not be assigned without the consent of the Secretary of the Interior. 30 U.S.C. § 187 (1982). If assignment of record title or operating rights has not been approved, the transferor or assignor continues to be responsible for compliance with lease obligations. 43 CFR 3106.7-2. Until an assignment is approved, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." 30 U.S.C. § 187a (1982). Under this statutory authority,

therefore, an assignment of a Federal oil and gas lease remains ineffective to relieve a party of responsibility until transfer is approved by BLM. Cities Service Oil & Gas Corp., 109 IBLA 322 (1989); PRM Exploration Co., 91 IBLA 165 (1986); see James Darby, 92 IBLA 231 (1986). The assignee of a Federal oil and gas lease, upon approval of an assignment to him, becomes the lessee of the Government and is responsible for compliance with the lease terms. The lessee is thereby obliged to acquaint himself with the terms of the lease and regulations affecting the lease. Nyle Edwards, 109 IBLA 72 (1989).

The case record maintained by BLM is the Government's only source of information about a lease and determines the identity of lessees responsible to the Secretary for compliance with terms of the lease. Departmental regulation provides that a "transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title * * * is approved by the authorized officer." 43 CFR 3106.7-2. The record maintained by BLM establishes that Abbott, together with his partner in Fast Enterprises, remains ultimately responsible for action required to plug or return well No. 23 to production. Transactions not approved by BLM cannot operate to defeat the Department's regulations implementing the statutory requirement that transfers affecting Federal leases, to be effective, must be approved by the Department.

Abbott argues that he has not profited from well No. 23, and that those who have done so should perform any work needed to complete obligations incurred by well operations. He contends that primary responsibility for such work rests with the well operator. Indeed, that is generally the case. See 43 CFR 3162.3-4. Nonetheless, ultimate responsibility remains with the record owner of the lease. 43 CFR 3106.7-2. Abbott has not shown that it was error for BLM to hold him responsible for plugging well No. 23 under the circumstances of this case where the operator did not respond to demands to plug or produce well No. 23. Cities Service Oil & Gas Corp., *supra*; PRM Exploration Co., *supra*. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

1/ For a discussion of the rights and duties owed by transferors of Federal oil and gas leases, see Pan American Petroleum Corp. v. Gibbons, 168 F. Supp. 867 (D. Utah), *aff'd*, Gibbons v. Pan American Petroleum Corp., 262 F.2d 852 (10th Cir. 1958).